

# HOUSE . . . . . No. 2701

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## The Commonwealth of Massachusetts

PRESENTED BY:

**William N. Brownsberger**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to establish a wellness trust.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
William N. Brownsberger	24th Middlesex
Carl M. Sciortino, Jr.	34th Middlesex
John P. Fresolo	16th Worcester
James J. O'Day	14th Worcester District

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT TO ESTABLISH A WELLNESS TRUST.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

### 1 Section 1

2 There shall be established on the books of the commonwealth a Wellness Trust, which shall be a distinct  
3 fund for the purpose of supporting improved access for all residents to fresh, healthy, local food and  
4 exercise and other activities to prevent chronic disease and promote health, prioritizing communities with  
5 a disproportionate burden of obesity and chronic disease. This fund shall not be subject to further  
6 appropriation.

7 The commissioner of public health shall administer the Wellness Trust, in consultation with other state  
8 entities where relevant to the goals stated above.

9 There shall be credited to the Wellness Trust fifty percent of the proceeds from Section 2 and 3 of this act.  
10 The monies shall be expended solely for the purpose described herein.

### 11 Section 2

12 The following chapter shall be inserted into the general laws of the commonwealth after chapter 65C

13 Chapter 65D.

### 14 Section 1. Minimally Nutritious Snack Foods Tax

#### 15 (a) Definitions

16 “minimally-nutritious snack foods” shall mean any item that is ordinarily sold for consumption  
17 without further preparation and does not meet the most recent Institute of Medicine standards for  
18 high school students.

#### 19 (b) Tax rate

20 There is hereby levied and there shall be collected a 10% tax on the wholesale cost of sales of  
21 non-nutritious snack food as defined in this section.

- (c) This tax shall be paid by distributors, manufacturers, wholesale dealers, or retailers who purchase minimally nutritious snack foods from an unlicensed distributor, wholesaler or manufacturer. The tax shall be paid monthly to the commissioner of the department of revenue in a format to be specified by the commissioner.

## Section 2 Sweetened Beverage Tax

- (a) Definitions. As used in this chapter, terms shall have the following meanings, unless the context indicates otherwise:

(1) "Bottle" means any closed or sealed glass, metal, paper, plastic, or any other type of container regardless of the size or shape of such container.

(2) "Bottled soft drinks" means any complete, ready to consume soft drink contained in any bottle.

(3) "Distributor, manufacturer, or wholesale dealer" means any person who receives, stores, manufactures, bottles or sells bottled soft drinks, soft drink syrups, simple syrups, or powders or base products for mixing, compounding or making soft drinks for sale to retail dealers, other manufacturers, wholesale dealers or distributors for resale purposes.

(4) "Milk" means natural liquid milk regardless of animal source or butter fat content; or natural milk concentrate, whether or not reconstituted, regardless of animal source or butter fat content or dehydrated natural milk whether or not reconstituted.

(5) "Natural fruit juice" means the original liquid resulting from the pressing of fruit or the liquid resulting from the reconstitution of natural fruit juice concentrate or the liquid resulting from the restoration of water to dehydrated natural fruit juice.

(6) "Natural vegetable juice" means the original liquid resulting from the pressing of vegetables or the liquid resulting from the reconstitution of natural vegetable juice concentrate or the liquid resulting from the restoration of water to dehydrated natural vegetable juice.

(7) "Non-alcoholic beverage" means and includes all beverages not subject to tax under M.G.L. Chapter 64h, section 2.

(8) "Place of business" means any place where soft drinks, syrups, simple syrups, powder or base products are manufactured or any place where bottled soft drinks, soft drink syrup, simple syrup, soft drink powder or other soft drink base product or any other item taxed under this act are received.

(9) "Powder" or "other base" means a solid mixture of basic ingredients used in making, mixing or compounding soft drinks by mixing the powder or other base with water, ice, syrup or simple syrup, fruits, vegetables, fruit juice, vegetable juice, or any other product suitable to make a complete soft drink.

(10) "Retailer" or "retail dealer" means any person other than a manufacturer, distributor or wholesaler, who receives, stores, mixes, compounds or manufacturers any soft drink and sells or otherwise dispenses the same to the ultimate consumer.

(11) "Sale" means the transfer of title or possession for a valuable consideration of tangible personal property regardless of the manner by which the transfer is accomplished. When a retailer is also acting as a wholesaler or distributor, the duty to report and pay the tax imposed by this act arises when the property is transferred to a retail store for sale to the ultimate consumer as reflected by the records of the taxpayer.

(12) "Simple syrup" means a mixture of sugar and water.

(13) "Soft drink" means any non-alcoholic beverage sold for human consumption including, but not limited to, the following: soda water, ginger ale, all drinks commonly referred to as cola, lime, lemon, lemon-lime and other flavored drinks whether naturally or artificially flavored, including any fruit or vegetable drink containing fifty percent (50%) or less natural fruit juice, natural vegetable juice, and all other drinks and beverages commonly referred to as soft drinks but not including coffee or tea unless the coffee or tea is bottled as a liquid for sale.

(14) "Syrup" means the liquid mixture of basic ingredients used in making, mixing or compounding soft drinks by mixing the syrup with water, simple syrup, ice, fruits, vegetables, fruit juice, vegetable juice, or any other product suitable to make a complete soft drink.

#### (b.). Licenses

All distributors, wholesalers or manufacturers of soft drinks whether located within or without the commonwealth of Massachusetts, who sell or offer syrups, simple syrups, powders or base products, or soft drinks for sale to retail dealers within the commonwealth of Massachusetts shall obtain a license for the privilege of conducting such business within Massachusetts from the department of agricultural resources.

(1) Any retailer who purchases syrups, simple syrups, powders or base products, or soft drinks from an unlicensed manufacturer, wholesaler or distributor shall obtain a license for the privilege of conducting such business from the commissioner of the department of agricultural resources.

(2) Any person required to obtain a license under this act shall obtain a license for each place of business owned or operated by him.

(3) The license shall be conspicuously displayed at the place of business for which it was issued.

#### (c) . Tax rate

There is hereby levied and there shall be collected a tax upon every distributor, manufacturer or wholesale dealer to be calculated as follows:

(1) 8% of the cost

i. per gallon for each gallon of soft drink syrup or simple syrup sold or offered for sale in the commonwealth of Massachusetts.

ii. per gallon for each gallon of bottled soft drinks sold or offered for sale in the commonwealth of Massachusetts.

94           iii. for each gallon of soft drink which may be produced from each package or container by  
95       following the manufacturer's directions in the case in which a package or container of powder or other  
96       base product other than a syrup or simple syrup is sold or offered for sale in Massachusetts. This tax  
97       applies when the sale of the powder or other base is sold to a retailer for sale to the ultimate consumer  
98       after the liquid soft drink is produced by the retailer.

99       (d.) Retailer tax

100       (1) Any retailer or retail dealer who purchases bottled soft drinks, soft drink syrup, simple syrup,  
101       powder or base product from an unlicensed distributor, manufacturer or wholesale dealer, shall be liable  
102       for the tax levied in subsection (c.) of this Act on those purchases.

103       (2)) A retailer shall not be subject to this tax if the retailer purchases syrups, simple syrups, powders or  
104       base products, or soft drinks from a supplier licensed under subsection (b.) of this Act.

105       (e.) Exemptions

106       The following shall be exempt from the tax levied by this act:

107       (1) Syrups, simple syrups, powders or base products, or soft drinks sold to the United States Government.

108       (2) Syrups, simple syrups, powders or base products, or soft drinks exported from the State of  
109       Massachusetts by a distributor, wholesaler or manufacturer.

110       (3) Any powder or base product that is used in preparing coffee or tea.

111       (4) Any frozen concentrate or freeze dried concentrate to which only water is added to produce a soft  
112       drink containing more than fifty percent (50%) natural fruit juice or natural vegetable juice.

113       (5) Any soft drink containing more than fifty percent (50%) natural fruit<sup>1</sup> juice or natural vegetable juice.

114       (6) Syrups, simple syrups, powders or base products, or soft drinks sold by one distributor, wholesaler or  
115       manufacturer to another distributor, wholesaler or manufacturer who holds a license issued by the  
116       commissioner of agricultural resources under the provisions of this act as a distributor, wholesaler or  
117       manufacturer provided that the license number of the distributor, wholesaler, manufacturer to whom the  
118       soft drink is sold is clearly shown on the invoice for the sale which is claimed to be exempt. This  
119       exemption shall not apply to any sale to a retailer.

120       (7) Any product whether sold in liquid or powder form which is intended by the manufacturer for  
121       consumption by infants and which is commonly referred to as "infant formula".

122       (8) Any product whether sold in liquid or powder form which is intended by the manufacturer for use as a  
123       dietary supplement or for weight reduction.

124       (9) Water to which no flavoring, whether artificial or natural, nor carbonation has been added.

125       (10) Any powder or other base product which is intended by the manufacturer to be sold and used for the  
126       purpose of domestically mixing soft drinks by the ultimate consumer.

127 (11) Any product containing milk or milk products.

128 (f.) Tax payment

129 This tax shall be paid by the distributor, wholesaler, or manufacturer when the syrup, powder or base  
130 product or soft drink is sold. The tax levied by this act shall be shall be paid by a retailer who purchases  
131 syrups, powder or base products or soft drinks from an unlicensed distributor, wholesaler or  
132 manufacturer. These aforementioned parties subject to pay this tax shall pay it monthly to the  
133 commissioner of the department of revenue in a format to be specified by the commissioner.